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Attorney for Plaintiff MEGAN MALOUIN

FILED

08 AUG -8 AM 10: 37

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

MEGAN MOULIN, an individual

Plaintiff,

vs.

COLLECTCORP CORPORATION, a California
Corporation; and DOES 1-100, Inclusive,

Defendants.

Case No.:

'08 CV 1445 J CAB

COMPLAINT FOR UNLAWFUL
DEBT COLLECTION PRACTICES

JURY TRIAL DEMANDED

COMES NOW, Plaintiff MEGAN MALOUIN, an Individual by and through his
attorneys of record, the Law Offices of Leonard H. Burgess, Esq., by Leonard H. Burgess, Esq.
and allege and complain as follows:

///

///

PRELIMINARY STATEMENT

1. Plaintiff brings this action pursuant to 15 U.S.C. Section 1692 *et. seq.*, the Fair Debt Collection Practices Act (the “FDCPA”)

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 15 U.S.C. Section 1692k(d).

3. Venue is proper in this District because the acts, transactions, and occurrences giving rise to this cause of action occurred here, the Plaintiff resides here, and Defendant, Collectcorp Corporation (“Defendant”) transacts business here.

PARTIES

4. Plaintiff, Megan Malouin (“Plaintiff”) is a natural person residing in San Diego County.

5. Defendant, Collectcorp Corporation, is a corporation regularly engaged in the business of collecting debts and does business in the City of San Diego.

FACTUAL ALLEGATIONS

1. Beginning on or about February 29, 2008, Plaintiff began receiving telephone calls from Defendant demanding payment of an alleged debt owed to American Express, (the “Alleged Debt”).

2. An employee of Defendant explained that American Express demanded Plaintiff to pay her alleged debt of approximately \$22,000 within two payments over a two-month period.

3. Plaintiff explained that this was not possible due to Plaintiff's financial situation, to which Defendant replied that American Express would only negotiate to spread out the payments to four months, with payments being made twice a month.

1 4. Plaintiff was very startled and frightened by this statement, but Plaintiff stated
2 that she would try her hardest to make these payments. Plaintiff borrowed money from her
3 grandmother and made a demanded down payment of \$7,694.08, but was not able to make the
4 second payment in full.
5

6 5. Sometime after this near the end of March, 2008, without permission of Plaintiff,
7 Defendant contacted Plaintiff's father at his home residence and left a message stating that
8 Defendant was trying to get a hold of Plaintiff. When Plaintiff's father called Defendant back,
9 Defendant stated that they were a collection company contacted by America Express and were
10 trying to get a hold of Plaintiff regarding Plaintiff's debt.
11

12 6. Plaintiff contacted American Express and spoke to a customer service
13 representative named Kim, who told Plaintiff there was no required payment schedule for the
14 settling of Plaintiff's debt and that any such assertion was arbitrarily set by Defendants.
15

16 7. Plaintiff then called Defendant back and spoke with Mr. Malorey, who told
17 Defendant that the sales representative at American Express was wrong, and that if Plaintiff
18 did not pay then a lawsuit would be filed immediately against her.
19

20 8. On May 6, 2008, Plaintiff spoke with Mr. Malorey again. Mr. Malorey said
21 that if Defendant did not reinstate her payment of approximately \$2200 from the prior month,
22 along with a substantial payment of at least one-half of the overall amount due by noon the
23 next day, a lawsuit would be filed against Plaintiff the next day. Defendant also stated that
24 American Express had looked at Plaintiff's assets and liabilities and determined that
25 Plaintiff had more money than she was revealing to Defendant. Plaintiff stated that she
26 could not pay this amount by noon the next day, and Mr. Malorey responded that there
27 would be no further conversations, specifically that Defendant would not call back and that
28

1
2 Plaintiff should not call them, as a lawsuit was going to be filed the next day.

3 9. On May 13, 2008, Mario Santos, an employee of Defendant, called and
4 discussed a payment plan with Plaintiff. Plaintiff mentioned her conversation with Mr.
5 Mallory, specifically the part regarding the necessary payment of one-half of the overall
6 amount to avoid an immediate lawsuit. Mr. Santos responded that Defendant would like
7 one-half of the overall debt amount but if that was not possible would be willing to accept less.
8 Mrs. Malouin asked if \$500 per month would be appropriate and Mr. Santos remarked that it
9 would not. This conversation is a clear contradiction from the conversation Mrs. Malouin had
10 with Mr. Mallory. Additionally, during this conversation, Mr. Santos represented that he was
11 from American Express, which is another misleading statement. When Plaintiff pointed this out,
12 Mr. Santos acknowledged that he did not in fact work for American Express.
13
14

15 10. Since this time Plaintiff has received yet another call on May 14, 2008, at
16 her house and a call on May 15, 2008, on her cell phone.
17

18 **VIOLATION OF THE FDCPA, 15 U.S.C. Section 1692 et. Seq.**

19 11. This is an action against Defendant for violation of the FDCPA 15 U.S.
20 Section 1692 et. seq.

21 12. Plaintiff realleges and incorporates paragraphs one (1) through ten (10) as if
22 fully set forth herein.

23 13. The Alleged Debt is a "debt" defined by 15 U.S.C. Section 1692 a (5) in that
24 some or all of the debt is an obligation incurred by Plaintiff arising out of a transaction in
25 which the money, property, insurance, or services which are subject of the transaction
26 were primarily used for personal, family, or household purposes.
27
28

1
2 14. Defendant, in the conduct of business, uses one or more
3 instrumentalities of interest commerce or the mails. The principal business of Defendant is
4 the collection of debts and Defendant regularly collects or attempts to collect, directly or
5 indirectly, debts owed or due another.

6
7 15. On numerous occasions, in connection with the collection of debts, Defendant
8 has used false, deceptive, or misleading representations or means, in violation of Section
9 807 of the FDCP Act, 15 U.S.C. § 1692e, including but not limited to, the following:

10 a) Defendant has threatened to take an action that cannot legally be taken
11 or that Defendant has not intended to take, in violation of Section 807(5) of
12 the FDCP Act, 15 U.S.C. § 1692e(5);

13
14 b) Defendant has used false representations or deceptive means to collect
15 or attempt to collect a debt or to obtain information concerning a consumer,
16 in violation of Section 807(10) of the FDCP Act, 15 U.S.C. § 1692e(10).

17
18 c) Defendant has used a name other than the true name of the debt
19 collector's business, company, or organization, in violation of Section
20 807(14) of the FDCP Act, 15 U.S.C. § 1692e(14).

21 16. As a result of Defendant's violation of the FDCPA, Plaintiff has been
22 damaged, including without limitation through mental anguish, despair, frustration,
23 embarrassment, nervousness, and loss of the capacity for the enjoyment of life and is
24 entitled to.

25
26 WHEREFORE, Plaintiff prays as follows:

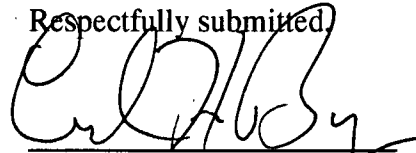
27 1. For actual damages pursuant to 15 U.S.C. Section 1692k(a)(1),
28

1 2. For statutory damages pursuant to 15 U.S.C. Section 1692k(a)(2)(A),

2 3. For reasonable attorneys' fees and costs pursuant to 15 U.S.C. Section
3 1692k(a)(3).
4

5 Dated: August 6, 2008

Respectfully submitted,


LEONARD H. BURGESS
Attorney for Plaintiff
MEGAN MALOUIN

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

MEGAN MOULIN

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Leonard H. Burgess, Esq., 402 West Broadway, Ste. 1760
San Diego, California 92101. (619)231-4300

DEFENDANTS

COLLECTCORP CORPORATION **08 AUG -8 AM 10:36**

County of Residence of First Listed Defendant SAN DIEGO DISTRICT COURT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

08 CV 1445 J CAB

DEPUTY

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. Section 1692 et seq.

Brief description of cause:

Violation of the Fair Debt Collections Practices Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

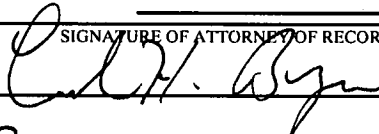
JUDGE

DOCKET NUMBER

DATE

8-7-08

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

153808

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE

TAC 8/08/08

OR

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

153808 - TC
* * C O P Y * *
August 08, 2008
10:40:43

Civ Fil Non-Pris

USAO #: 08CV1445
Judge.: NAPOLEON A JONES, JR
Amount.: \$350.00 CK
Check#: BC301

Total-> \$350.00

FROM: MEGAN MOULIN
VS
COLLECTCORP CORPORATION